

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

NAJI SANDERS,

Plaintiff,

9:19-cv-1314 (BKS/TWD)

v.

KEVIN ST. MARY, et al,

Defendants.

Appearances:

Plaintiff pro se:

Naji Sanders
18-A-0885
Great Meadow Correctional Facility
Box 51
Comstock, NY 12821

For Defendants:

Letitia James
Attorney General of the State of New York
Lauren Rose Eversley
Assistant Attorney General, of Counsel
The Capitol
Albany, NY 12224

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Naji Sanders, a New York State inmate proceeding *pro se*, commenced this civil rights action asserting claims under 42 U.S.C. § 1983 arising out of his incarceration at Upstate Correctional Facility. (Dkt. No. 1). On September 15, 2020, Defendants filed a motion for summary judgment under Fed. R. Civ. P. 56 seeking dismissal because Plaintiff failed to exhaust his administrative remedies before commencing this action. (Dkt. No. 25). Plaintiff filed a response on November 5, 2020, and Defendants filed a reply on December 7, 2020. (Dkt. Nos.

36, 38). This matter was assigned to United States Magistrate Judge Thérèse Wiley Dancks who, on April 22, 2021, issued a Report-Recommendation recommending that Defendants' motion for summary judgment be granted and that this action be dismissed without prejudice because Plaintiff commenced this action before he completed the administrative review process. (Dkt. No. 44). Magistrate Judge Dancks advised the parties that under 28 U.S.C. § 636(b)(1), they had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 44, at 11–12).

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is


ORDERED that the Report-Recommendation (Dkt. No. 44) is **ADOPTED** in its entirety; and it is further

ORDERED that Defendants' motion for summary judgment (Dkt. No. 25) is **GRANTED**, and Plaintiff's second amended complaint (Dkt. No. 11) is **DISMISSED WITHOUT PREJUDICE** for failure to exhaust administrative remedies; and it is further

ORDERED that the Clerk serve a copy of this Order upon the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: May 19, 2021
Syracuse, New York


Brenda K. Sannes
U.S. District Judge